

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

ONE APUS CONTAINER SHIP INCIDENT
ON NOVEMBER 20, 2020

This Document Relates to:

*Falvey Cargo Underwriting, Ltd., et al v.
Expeditors International of Washington, Inc.,
et al*, Case No. 1:22-cv-04342

Case No. 1:22-md-3028-PAE

FALVEY CARGO UNDERWRITING,
LTD. and CERTAIN INTERESTED
UNDERWRITERS SUBSCRIBING TO
POLICY NOS. MC-101807, MC-600230,
and MC-900154,

Plaintiffs,

v.

EXPEDITORS INTERNATIONAL OF
WASHINGTON, INC.,

Defendant.

THIRD-PARTY COMPLAINT

EXPEDITORS INTERNATIONAL OF
WASHINGTON, INC.,

Defendant/Third-Party Plaintiff,

v.

HYUNDAI MERCHANT MARINE
COMPANY, LTD., OCEAN NETWORK
EXPRESS, PTE., LTD.

Third-Party Defendants.

COMES NOW defendant Expeditors International of Washington, Inc. (“Expeditors”), as and for its Third-Party Complaint, under Fed. R. Civ. P. 14(c) and 18(a), against Third-Party Defendants Hyundai Merchant Marine Company, Ltd., a foreign corporation (“HMM”), and Ocean Network Express, PTE., Ltd, (“ONE”), and hereby alleges and avers as follows:

Parties

1. Expeditors is a non-vessel operating common carrier which entered into contracts of carriage with HMM and ONE for international ocean transit of the cargo that is the subject of plaintiffs' primary action against Expeditors ("Cargo").

2. HMM and ONE issued master sea waybills, numbered HDMUHKWB8539412, HDMUHKWB8535378, HDMUHKWB8535380, HDMUKHLB1997607, HDMUKHLB1997609 (HMM), ONEYHKGAN5021700 and ONEYHKGAN8344403 (ONE); governing that transport of the Cargo. Copies of said master sea waybills are attached hereto as Exhibit A.

Jurisdiction and Venue

3. The Court has jurisdiction over this third-party action under 28 U.S.C. §1333 because its subject matter derives from the same facts and circumstances alleged in plaintiffs' primary action against Expeditors; and it addresses international ocean transportation of cargo into the United States. Subject matter jurisdiction is further established under 28 U.S.C. §1332 Expeditors is a Washington State corporation and third-defendants are corporations of foreign countries, and at issue is \$861,198.64 as alleged in the plaintiffs' primary action.

4. Venue in this Court is proper based on the parties' contractual forum selection clause; and because the facts and circumstances of this third-party action derive from the same on facts and circumstances as is alleged in plaintiffs' primary action.

Allegations of Operative Fact

5. In plaintiffs' primary action, plaintiff seeks to recover from Expeditors the value of property allegedly damaged, lost, destroyed or delayed while in HMM's and/or ONE's care, custody and control during the transport governed by their master sea waybills.

6. Expeditors committed no negligence, breach of contract or other wrongdoing that caused or contributed to plaintiffs' alleged losses, if any.

7. Any negligence, breach of contract or other wrongdoing that caused or contributed to plaintiffs' losses, if any, was committed by and/or is the responsibility of HMM and ONE.

**Cause of Action
Indemnity**

8. Expeditors repeats and realleges the allegations of paragraphs 1 through 7 hereof as if fully stated herein.

9. Any negligence, breach of contract or other wrongdoing by any entity other than Expeditors that caused or contributed to plaintiffs' loss, if any, and that resulted in plaintiffs' alleged losses, is the contractual and/or statutory and/or common law and/or international treaty responsibility of HMM and ONE.

10. Expeditors is entitled to full indemnity from HMM and/or ONE for any and all liability Expeditors may be adjudged to have to plaintiffs, and/or any judgment entered against it in favor of plaintiffs against Expeditors in plaintiffs' primary action herein, plus Expeditors' costs and attorneys' fees incurred in the defense of plaintiffs' primary action and the prosecution of this third-party action.

11. Pursuant to Fed. R. Civ. P. 14(c), Expeditors demands judgment in the plaintiffs' favor against the third-party defendants. Accordingly, HMM and ONE must defend under Fed. R. Civ. P. 12 against the plaintiffs' claim as well as Expeditors' claim; and the action proceeds as if the plaintiffs had sued both Expeditors and third-party defendants HMM and ONE.

WHEREFORE, Expeditors prays for relief as follows:

1. For an award of indemnity against HMM and ONE for any and all liability Expeditors may be adjudged to have to plaintiffs in plaintiffs' primary action herein, and/or any

judgment entered against it in favor of plaintiffs, including Expeditors' costs and attorneys' fees incurred in the defense of plaintiffs' primary action herein;

2. For an award of Expeditors' costs and attorneys' fees incurred in the prosecution of this third-party action; and

3. For such other and further relief as the Court may deem just and proper.

DATED: November 4, 2022

LANE POWELL PC

By: /s/ Steven W. Block

Steven W. Block

NY State Bar No. 2121259

1420 Fifth Avenue, Suite 4200

P.O. Box 91302

Seattle, Washington 98111-9402

206.223.7000

*Attorney for Defendant/Third-Party Plaintiff
Expeditors International of Washington, Inc.*